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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,900	11/23/2001	Parag Gokhale	606928006US	3389
25096 7590 03/30/2011				
PERKINS COIE LLP				
PATENT-SEA				
P.O. BOX 1247				
SEATTLE, WA 98111-1247				
EXAMINER				
CHEN, TE Y				
ART UNIT		PAPER NUMBER		
2161				
NOTIFICATION DATE		DELIVERY MODE		
03/30/2011		ELECTRONIC		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PARAG GOKHALE, RAJIV KOTTOMTHARAYIL, and
SRINIVAS KAVURI

Appeal 2010-011526
Application 09/991,900¹
Technology Center 2100

Before JOSEPH L. DIXON, LANCE LEONARD BARRY, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Application filed November 23, 2001. The real party in interest is
CommVault Systems, Inc.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1-20, which are all the claims pending in the application. We have jurisdiction over the appeal under 35 U.S.C. § 6(b). An Oral Hearing was scheduled and confirmed for March 23, 2011, however Appellants' representative failed to appear. Therefore, we decide the appeal on the written record.

We AFFIRM.

Appellants invented a system, method, and computer readable medium for exporting media in a library according to a scheduled second time. (Spec., Abstract.)

The appeal contains claims 1-20. Claims 1, 12, and 18 are independent claims. Claim 1 is illustrative:

1. A method for exporting removable media in a storage device according to a schedule, comprising:
 - at a first time, receiving export identification data comprising first data identifying one or more removable media from the storage device to be exported and second data identifying a second time at which the one or more removable media is scheduled to be exported;
 - storing the export identification data in a data file; and
 - at the second time, using the stored export identification data to select the one or more removable media to be exported to export the selected media from the storage device library.

Appellants appeal the following rejection:

Claims 1-20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Crouse (US 5,764,972, June 9, 1998) and Sitka (US 6,330,572 B1, Dec. 11,

2001).

FACTUAL FINDINGS

Sitka

Sitka discloses that “[a] shelf management policy may . . . (c) set a tape retention interval; (d) set a maximum media age according to which the system will copy to a new media and scrap old media when the age is exceeded; (e) set a maximum mount count by which the system will copy to new media and scrap old media when the count is exceeded . . . (i) specify import/export volumes.” (Col. 18, ll. 22-36.)

ANALYSIS

Appellants argue claims 1-20 as a group. (App. Br. 12-18). For claims 2-20, Appellants repeat the same argument made for claim 1. We will, therefore, treat claims 2-20 as standing or falling with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii). *See also In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

Issue1: Did the Examiner err in finding that the combination of Crouse and Sitka, particularly Sitka, discloses “second data identifying a second time at which the one or more removable media is scheduled to be exported,” as set forth in claim 1?

Appellants contend that “Sitka describes exporting a volume upon reaching some threshold storage capacity. Like Baca before it, Sitka makes no mention of scheduling the export of the volume.” (App. Br. 15; *see also* Reply Br. 5.)

The Examiner found that “the claimed scheduled first and second time are met by the site-defined time intervals or by the direct operator intervention in accordance with the file migration attributes such as a remote file life span times.” (Ans. 8-9.) The Examiner further found that Sitka discloses setting a tape retention interval and a maximum media age, whereby the media is scrapped when the age is exceeded. (*Id.* at 11.)

Here, the Examiner starts off by equating Crouse’s and Sitka’s “file migration” procedures with the claimed removable media exportation. While we agree with Appellants that “scheduling a migration of files from one store to another does not correspond to scheduling the export[ation] of removable media” (*see* App. Br. 14), the Examiner has also identified on page 11 of the Answer that Sitka discloses setting a tape retention interval and a maximum media age and scrapping the old media when the age is exceeded (FF). Appellants failed to respond to these findings in the Reply Brief.

We find that setting a maximum age is reasonably consistent with setting a time in that an age changes at midnight, every night. We also find that “scrapping media” is consistent with “exporting media” in that the media is removed from the storage library. While the Examiner could have been clearer in correlating the claimed “second time” with the above-noted disclosure of Sitka, the fact remains that the Examiner did present this evidence to Appellants and Appellants did not respond thereto. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(vii). *Cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art.”) Therefore, any

arguments from Appellants directed towards Sitka's scrapping the media at a maximum age, is waived. Thus, based upon our review of the record, we find that the weight of the evidence supports the Examiner's position as articulated in the Answer.

Issue2: Did the Examiner err in combining Crouse with Sitka?

Appellants contend that "there is no such teaching, suggestion, or motivation in the applied references to modify or combine them in the manner proposed by the Examiner." (App. Br. 16.)

The Examiner found that "an ordinary skilled person in the art at the time the invention was made would have been motivated to modify Crouse's user interface with the import and export commands as disclosed by Sitka, because by doing so, the combined system will facilitate a system user to schedule the import or export operation with ease." (Ans. 5.)

We start by noting that "analysis [of whether the subject matter of a claim would have been obvious] need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)); see also *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1361 (Fed. Cir. 2006) ("The motivation need not be found in the references sought to be combined, but may be found in any number of sources, including common knowledge, the prior art as a whole, or the nature of the problem itself."); *In re Bozek*, 416 F.2d 1385, 1390 (CCPA 1969) ("Having established that this knowledge was in the art, the examiner

could then properly rely, as put forth by the solicitor, on a conclusion of obviousness ‘from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference.’”); *In re Hoeschele*, 406 F.2d 1403, 1406-07 (CCPA 1969) (“[I]t is proper to take into account not only specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom”) (internal citations omitted).

Here, the Examiner, having established that this knowledge was in the art, relied on common sense to conclude that export commands can make export operations easier. Because the Examiner has found actual teachings in the prior art and has provided a rationale for the combination, we find that the Examiner has provided sufficient motivation for modifying Crouse with the teachings of Sitka, and we will therefore sustain the obviousness rejection of claims 1-20.

In view of the above discussion, since Appellants have not demonstrated that the Examiner erred in finding the argued limitations in the disclosure of Sitka, the Examiner’s 35 U.S.C. § 103(a) rejection of representative independent claim 1, as well as claims 2-20 not separately argued by Appellants, is sustained.

DECISION

We affirm the Examiner’s § 103 rejection.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

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